

OSHA Citations: The “General Duty Clause” Defined

Safety considerations and measures to protect your employees should be your top priority. Positive steps should be taken immediately to ensure roadway workers are protected at all times while performing their duties.

This brochure addresses one element of roadway work – the installation and removal of traffic control devices (cones and other devices) from moving vehicles. This brochure was created not as a “standard” for the industry, but rather, to raise the issue of worker protection to ATSSA members across the country. Those companies who do not take positive steps to protect workers may face citations and possible fines from inspectors of the Occupational Safety and Health Administration (OSHA).

A company observed by OSHA inspectors not taking safety steps to protect their workers, can be cited under the “General Duty Clause” for hazards not addressed by OSHA Standards. The General Duty Clause is found at Section 5(a) of the OSH Act. It provides, in pertinent part, as follows:

“Sec. 5(a) - Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing, or likely to cause, death or serious physical harm to his employees.”

Several citations over the years have resulted in fines totaling tens of thousands of dollars. To illustrate the financial severity of these citations,



An example of a protective cage under construction that is fitted to a stake-bed truck.

the following two recent examples of citations and subsequent fines are provided¹:

- A \$350,000 citation issued for a variety of serious and repeat violations involving use of hardhats, fall protection, energy control, respirators, machine guarding, noise monitoring and eyewashes.
- A \$292,500 citation issued for numerous and repeated safety violations involving hardhats, fall protection, scaffolding and training.

Citations may be issued to employers when OSHA inspectors observe workers performing their duties, usually from the rear of vehicles, totally unprotected. An example of a situation that would warrant a citation from OSHA under the General Duty Clause is contained in the following testimonial:

“I was traveling south on Interstate 95. Orange cones were set near the right shoulder of the highway. I saw three men sitting on the gate of a pick-up truck retrieving these cones. To compound the situation further, I observed this pick-up doing this as it was traveling in reverse into oncoming traffic.” – Virginia Resident.

OSHA has adopted specific regulations for most aspects of the construction industry, however, there will always be occasions when a dangerous condition may exist which does not directly violate any specific OSHA regulation.

For example, Exposing workers to the swing radius of an excavator can result in serious and fatal injuries. This hazard is not addressed by an OSHA standard, but would be cited as a General Duty Clause - 5(a)(1) – violation referencing the Construction Industry Manufacturers Association guidelines.

The drafters of OSHA Standards knew that every conceivable hazard could not be regulated by a specific standard, so the General Duty Clause was written to cover those recognized hazards not specifically included in other

regulations.

This “catch all” provision allows OSHA inspectors to issue citations to contractors for unsafe conditions and recognized hazards for which there is no specific identifiable OSHA Standard. It also may be evidence of a breach of duty of the contractor in a civil suit brought by an injured worker. In today’s litigious society, can you afford *NOT* to protect your workers?

It is important to note, that OSHA regards the General Duty Clause as an important tool in the pursuit of safety. It has been liberally used to protect workers in many situations across the country.

¹ International Safety Equipment “Protection Update,” Fall 2002

Devices to Protect Workers

OSHA will accept a platform at the rear of vehicles, with a standard railing to protect workers. The height of the rail for this type of device should be 39-45 inches from the base of the platform to ensure the worker cannot fall. In addition, there should be an opening in this railing to allow the worker “emergency egress” should the condition warrant, such as an errant vehicle expected to come in contact with the vehicle from which a worker is setting or retrieving devices. The opening in the guardrail must be protected by a gate or similar device that provides protection equivalent to the guardrail system. The platform should also be constructed of rigid materials to ensure stability of the device. A safety factor of four is recommended.

Should production of this type of device be impossible, employers may develop other means of setting and retrieving devices – as long as the workers are protected in some way. Companies developing alternative methods to protect workers can obtain an OSHA opinion on their proposals by e-mailing electronic photographs of their devices to FallProtection@atssa.com.

Another important item to note is OSHA will not

The Use of Lanyards and/or Harnesses

During discussions between ATSSA and OSHA, the issue of “lanyards” or “harnesses” as a means to secure workers in moving vehicles was discussed.

These types of devices are not recommended by ATSSA as a form of Fall Protection, as the worker would have to be “tethered” so tightly, the task of setting and/or retrieving devices would not be possible. Conversely, an extended tether might result in a worker being dragged behind a vehicle after a fall. Also during these discussions, it was noted that “quick release” methods (i.e. an automobile-type seatbelt) should always be utilized by workers setting traffic control devices from a seat mounted on the vehicle. This would enable employees immediate exit from a vehicle in the event of an incoming, errant motor vehicle.

endorse a particular product, device or method developed by any one company. OSHA is, however, willing to offer

comment to determine if a particular product or method is acceptable to protect workers setting and retrieving cones or other devices from moving vehicles. Again, submissions for comment should be sent to FallProtection@atssa.com.

Note: The use of a platform with guardrails is to prevent the worker from falling off the vehicle during the setting and retrieval of cones or other traffic control devices and will not protect the worker from accidents, collisions, or unsafe driving. The use of a truck-mounted attenuator (TMA) is recommended in high speed and high traffic areas.



The bed of this truck was modified on the side to allow workers adequate protection when setting and retrieving devices. Note the truck-mounted attenuator at the rear of the truck.

ATSSA and OSHA Collaborate for a Solution

Beginning in 2001, ATSSA and OSHA worked together to compile the information included in this brochure to enable owners, managers and workers to understand what OSHA expects in terms of safety when workers set or retrieve devices from moving vehicles.



This is a side view of a removable device. Note the rigid “bars” that ensure the worker is adequately protected.

Frequently Asked Questions Regarding Fall Protection...

Q. "How are OSHA citations issued?"

A. OSHA inspectors carry credentials identifying who they are. In Region V, at any given time, an OSHA inspector can arrive in your work zone - unannounced - and conduct an inspection. If unsafe practices or violations are documented, citations will be issued to the employer.

Note: Region V has a Local Emphasis Program related to roadway work zones. This program may become a National Emphasis Program in the near future. Also, other emphasis programs such as those for trenching, falls, and silica could gain OSHA access to your work zones in other parts of the country.

Q. "Our company is small. We cannot afford a truck designated solely for setting and retrieving cones and other devices. How can we be in compliance?"

A. OSHA recognizes the fact that many companies do not have the financial resources to designate a vehicle full-time for placing devices on roadways. In these cases, workers must still be protected in some way as they work from moving vehicles. One option is workers can walk when setting devices, with protection provided from a truck-mounted attenuator. Also, the platform with guardrails can be designed to be removable from the vehicle. The use of bolts or pins to secure the platform to the vehicle would permit the platform to be easily removed when the vehicle would be required for other uses.

Q. "Is the use of an attenuator required?"

A. The use of a truck-mounted attenuator to protect workers is always highly recommended and encouraged by ATSSA and OSHA as a means to protect workers who are setting and retrieving roadway devices. Local transportation agencies may have specific requirements for these safety devices.

Power Point Presentation Available for Download

At the ATSSA Midyear Meeting in Sept. 2002, a Fall Protection "PowerPoint" presentation drafted by OSHA was presented to several committees. The presentation showed several examples of acceptable methods by which to set or retrieve devices from moving vehicles, while affording protection for workers. Following the Midyear Meeting, the presentation was made available to ATSSA members. Over 100 companies across the country - and abroad - requested and received the presentation via e-mail. The presentation is currently available at the "Members Only" link of www.atssa.com for any ATSSA member to download.

There are several photographs within this brochure from that presentation that illustrate methods to protect workers. No exact specifications are provided. ATSSA member companies should develop similar means of setting and retrieving devices, as long as the workers are protected in some way. Additional photographs are available in the downloadable presentation.

OSHA also recognizes the fact that the cost of parts and/or equipment to construct such devices may be prohibitive for some companies, including designating a truck solely for cone setting and retrieving. The platform can be designed so that it can be removable, secured by bolts or pins, in the event the vehicle is needed for some other use. Regardless of these and other situations, some effort must be developed to protect workers. Until methods to protect workers are developed, OSHA recommends that workers setting and retrieving devices on roadways WALK while performing their duties. The use of a truck-mounted attenuator under these conditions is also highly recommended.

Also, there are several automated cone-setting machines available to the industry. Several ATSSA member companies produce these devices. Visit Roadcommerce.com to locate these and other products that are all readily available.



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Frequently Asked Questions Regarding Fall Protection...

Q. "Why are "tethers" or "harnesses" not acceptable?"

A. To enable workers to do their jobs properly, tethers would have to be so long, they could create a danger, as the worker could be dragged from a moving vehicle if he/she fell. Conversely, a worker is not able to perform his/her duties adequately fitted with a short, tight tether. Lastly, a worker must be able to exit a vehicle quickly in the event of an incoming, errant motor vehicle. With so many variables, ATSSA has determined tethers and harnesses are not a desirable method of preventing workers from falling off the back or bed of a moving vehicle during traffic control device setting operations.

Q. "When does my company have to comply with OSHA requirements?"

A. Companies should already be in compliance. Until a platform with guardrails can be constructed employers must take other measures to protect their workers. Workers can walk when setting traffic control devices, and it is recommended that a truck-mounted attenuator be utilized.

Q. "How can I be assured that my company is in compliance with OSHA's requirements?"

A. Companies who have developed methods or devices to protect their workers may e-mail electronic photographs to FallProtection@atssa.com. The photographs should clearly show how the worker performs his/her duties with the safety device. Once the electronic photographs are received, they will be forwarded to the appropriate OSHA representative for review.

(Front Cover) This vehicle is fitted with a removable, rigid platform to protect workers. Retroreflective sheeting and tail lights on the device were added to increase visibility of the device in traffic.